IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 348 of 2000
For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

Appearance: MR MRUGEN K PUROHIT for the Petitioner.
MS PJ DAVAWALA for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/09/2002

ORAL JUDGEMENT

The petitioner has filed this petition under Article 226 of the Constitution of India, challenging the directions issues by the Passport Authority in its communication dated 8.1.1999 as well as for quashing and setting aside the decision of the Passport Authority in not issuing passport to the petitioner.

The petitioner is a practising Chartered Accountant. Since he was desirous of having a passport, he made an application on 10.3.1999, with all necessary papers. At the time of processing the passport application, the authority found that some criminal complaints are pending against the petitioner. The petitioner was asked by the Authority to the produce the copy of the judgment and the said information was called for from the petitioner by way of letter dated 21st April, 1997. The petitioner was informed that if he

failed to produce such copy, the case of the petitioner will be treated as closed. The Authority has informed the petitioner to produce copy of the Court's judgment on the ground that criminal complaints are filed against the petitioner, which are registered as Crime Register I Nos.3 of 1997, 4 of 1997 and 6 of 1997. At the relevant time, the complaints were filed before the concerned Police Station.

It is submitted by the learned Advocate for the petitioner that, ultimately, the petitioner was released on bail in connection with all the aforesaid criminal cases and at present, the aforesaid cases are pending in the Court of the Chief Judicial Magistrate at Rajkot, as Criminal Case Nos. 2819 of 1998, 2774 of 1998 and 6199 of 1998.

The complainant in all these criminal cases is the Gujarat State Financial Corporation and the said Criminal Cases are filed against him under Sections 476, 462, 465, 471 and 420 read with Section 120-B of the Indian Penal Code on the ground that the petitioner, being a professional Chartered Accountant, gave false certificate to accused Nos. 1 and 2, i.e. Vasantkumar Ratnabhai and Chandresh Mehta. It is submitted by the learned Advocate for the petitioner that the aforesaid cases are pending before the competent criminal court. Since at the relevant time, the FIR was filed before the appropriate Police Station, there was an adverse Police report against the petitioner and the Police Authority informed the passport authority that the petitioner is an accused in the aforesaid criminal cases and criminal cases are pending against him. Considering the aforesaid aspect, the passport authority asked the petitioner to produce the judgment of the criminal court. Since, however, no final judgment was given in the criminal cases, it was not possible for the petitioner to produce such judgment as demanded by the Passport Authority. The Passport Authority also informed the petitioner by letter dated 8th January, 1999 that the petitioner may submit the copy of the judgment along with his explanation as to why fact about the pendency of the criminal cases is not mentioned by the petitioner. It is argued by Mr.Purohit, learned Advocate for the petitioner, that since the FIR was lodged subsequently, after the petitioner's application to the Passport Authority, naturally the said fact was not mentioned by the petitioner in his passport application. Ultimately, by filing this petition, it is prayed that the authority may be directed to issue passport in favour of the present petitioner.

The petition is resisted by the Passport Authorities on the ground that since criminal case is pending against the petitioner, it is not possible to issue passport in favour of the present petitioner. It is argued by Ms.Davawala, learned Advocate for the respondent, that in view of the pendency of the criminal cases, the authority was justified in not issuing the passport in favour of the present petitioner.

At this stage, reference is required to be made to Section 6(2) of the Passport Act, 1967. Provisions of Section 6(2)(f) provide as under :-

> " ... ...
>
> 6. Refund of passports, travel documents, etc.-
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> xxx xxx xxx
>
> (2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of Section 5 on any one or more of the following grounds, and on no other ground, namely :-
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> xxx xxx xxx
>
> (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;
>
> ... ..."

The question which requires consideration in this petition is whether the Passport Authority is justified in refusing to issue passport in favour of the petitioner, against whom criminal cases are pending before a competent Criminal Court. On behalf of the petitioner, it is argued that the criminal cases are likely to take a long time and till then, it will not be proper to refuse the passport as the petitioner will not be able to go abroad as he wants to go for a business tour. He submitted that in case the petitioner is acquitted in future, the loss, which he may suffer by not going abroad for the purpose of his profession, cannot be compensated in terms of money. On behalf of the

petitioner, reliance is also placed on a decision of the Bombay High Court in Deepak Dwarkasingh Chhabria v. Union of India and another, AIR 1997 Bombay 181.

In the aforesaid judgment, the Bombay High Court has considered the aforesaid aspect about issuance of passport in cases where a criminal case is pending against the applicant. The Bombay High Court has considered a Notification issued by the Central Government, dealing with such type of situations. Relying on the said judgment, it is argued by Mr.Purohit that the Passport Authority was not justified in refusing to issue passport in favour of the petitioner on the ground of pendency of criminal cases.

The aforesaid Notification is elaborately dealt with by the Bombay High Court and the Bombay High Court has held as under in paragraphs 8, 9 and 10 :-

" ... ...

8. Now I shall refer to certain notifications issued by the Central Government under Section 22(a) of the Act which were brought to the notice of this Court by the learned counsel for the passport authority during arguments. It seems that after the Supreme Court judgment in Maneka Gandhi's case, the Central Government in exercise of the powers conferred by clause (a) of Section 22 of the said Act, issued a notification dated 16th August, 1979 exempting citizens of India against whom proceedings in respect of an offence alleged to he been committed by them are pending before any criminal Court in India and who produce orders from the Court concerned permitting them to depart from; India, from the operation of the provisions of clause (f) of sub-section (2) of Section 6 of the Act, subject to the following conditions, namely :

(a) the passport to be issued to every such citizen shall be issued;

(i) where the order of the Court referred to above, gives such permission for a period not exceeding three months, for a period of three moths and an observation will be made on the passport that the holder may travel abroad for a period not

exceeding that specified in such order, or

(ii) if no period is specified in such order, the passport shall be issued for a period of six months and may be renewed for a further period of six months, if the order of the Court is not cancelled or modified; or

(iii) in any other case, for the period for which such permission is given by such order;

(b) the said citizen shall give an undertaking in writing to the passport authority that he shall, if required by the Court concerned, appear before it any time during the continuance in force of the passport so issued.

9. By the notification dated 25th August, 1993, the earlier notification was substituted granting exemption to the citizens against whom proceedings in respect of an offence alleged to have been committed by them are pending before a Criminal Court in India and who produce order from the Court concerned permitted them to depart from India, from the operation of the provisions of clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely,

(a) the passport to be issued to every such citizen shall be issued;

(i) for the period specified in order of the Court referred to above, if the Court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period of validity of the passport, the passport

shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued fro the period of travel abroad specified in the order.

(b) any passport issued in terms of (a)(ii) and (a)(iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the Court; and provided further that, in the meantime, the order of the Court is not cancelled or modified;

(c) any passport issued in terms of (a)(i) above can be further renewed only on the basis of a fresh order, specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport authority that he shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued.

10. In view of the aforesaid notifications by the Central Government, it is clear that the citizens against whom criminal cases are pending are made exempt from the operation of Section 6(2)(f) provided they produce orders from the concerned Court permitting them to travel abroad subject to the terms and conditions mentioned in the notifications. In other words, an application of passport is not liable to be refused on the ground of pendency of criminal case if the applicant obtains permission from the concerned Criminal Court for travelling outside India. The passport authority, therefore, cannot reject the application for passport mechanically on the ground of pendency of criminal case against the application. It will be the duty of the passport authority to bring the relevant notification to apply

to the concerned Criminal Court for permission to travel abroad. If the applicant obtains such permission from the Criminal Court where his case is pending, the passport authority will be duty bound to issue the passport in terms of the order of the Criminal Court subject to the conditions of the notification. In the present case, the passport authority has failed to bring the relevant notification to the notice of the applicant in spite of the fact that the application was pending before the authority for more than one-and-half years. In fact, it is doubtful whether the passport authority himself was aware of the notification granting exemption to the citizens from the operation of Section 6(2)(1). It is a mater of regret that applications are kept pending by the passport authority for such along time particularly, when it affects the fundamental right of the citizen. At no point of time the passport authority had informed the petitioner that he was entitled to passport subject to orders of the Criminal Court. The passport authority has also failed to give information or particulars about the pending criminal case. It is an admitted position that till today, the petitioner is not served with the summons of the pending criminal case. In such a situation, it was all the more necessary for the passport authority to inform the petitioner of his right to apply to the Criminal Court for permission to travel abroad. In my opinion, it is necessary to issue specific directions to the passport authority in order to ensure that the citizens' application for passport are not unnecessarily delayed on account of pending criminal cases.

Accordingly, it is directed that in all cases covered by Section 6(2)(f) the passport authority shall forthwith inform the applicant about his right to apply to the concerned Criminal Court for permission to travel abroad in terms of the notification dated 25th August, 1993. In case the applicant demands a copy of the notification, same shall be supplied by the

> passport authority subject to payment of charges. Needless to mention that it will be open for the applicant to approach the Criminal Court, where criminal case against him is pending, for permission to travel out of India. Even if he has not received summons from the Criminal Court, it will be open for the applicant to apply to that Court for a limited purpose of issuing the necessary orders for grant and / or renewal of passport. Considering the fact that the matter involves the fundamental right of the applicant, the concerned Court shall decide such application as expeditiously as possible and preferably within four weeks from the date of receipt of such application, after notice to the prosecution. In case the Criminal Court passes an order for issuance of passport, the passport authority shall forthwith issue the passport to the applicant subject to the terms and conditions mentioned in the notification but without making any endorsement on the passport about the pending criminal case.
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> ... ..."

Considering the aforesaid notification issued by the Central Government, as well as considering the judgment of the Bombay High Court, in my view, this petition is required to be allowed by giving opportunity to the petitioner to approach the concerned Magistrate with an appropriate application for permitting him to go abroad for a particular time limit. If the concerned Magistrate permits the petitioner to go abroad for a particular period on the basis of such order, it will be open for the petitioner to request the passport authority to grant him passport for a limited period, during which he is permitted to go abroad. The petitioner may accordingly approach the concerned criminal court, with a prayer to permit him to go abroad and if any such application is preferred, the concerned criminal court may decide such application in accordance with law. If the concerned Criminal Court, before whom the criminal cases are pending, permit the petitioner to go abroad, the passport authority may pass appropriate order in the matter of issuing passport to the petitioner in terms of the order of the criminal court and subject to the conditions laid down by the Notification. As observed by the Bombay High Court, the passport authority, in future

cases of a similar nature, may inform the applicants, against whom any criminal case is pending, about the Notification of the Central Government and may inform such applicant that they may approach the concerned criminal court for permitting such applicant to go abroad and if any such order is passed by the Magistrate, permitting such applicant to go abroad, the passport authority may dispose of such applications in view of the Notification and in view of the provisions of the Passport Act. It is clarified that in case the criminal court permits the petitioner to go abroad, the passport authority shall act on the basis of such report for the purpose of issuing passport. The passport may not be refused solely on the ground of pendency of the present criminal cases in case the Magistrate so permits. It is clarified that if there are other grounds available to the passport authority to refuse the passport, it is for the authority to consider the same in accordance with law. The passport may not be refused solely relying on the present criminal cases, which are pending against the petitioner, in case permission is granted by the Magistrate, as indicated above. It is also clarified that whether such application should be granted or not is within the jurisdiction of the competent Criminal Court and it is for the concerned Magistrate to decide such application, if at all the same is received from the present petitioner and it is for the Magistrate to decide the same in accordance with law and this Court has not expressed any opinion on the aforesaid subject.

Mr.Purohit submitted that, initially, the petitioner approached the Magistrate for permitting him to go abroad, but, at that time, the same was rejected on the ground that he has not imposed any condition to the effect that he cannot go abroad. However, in view of the factual aspect, as discussed above, the petitioner is permitted to apply for a specific purpose, allowing him to go abroad for a limited period, which he may indicate in his application and the Magistrate may decide such application on its own merits. In my view, the order of the Magistrate will be necessary in view of the Notification of the Central Government, as indicated above, and on the basis of such order, the passport authority is required to decide the application of the petitioner for issuance of passport, keeping in mind the observations made in this order, as well as the Notification issued by the Government in this behalf. If any such application is made before the concerned Magistrate, the Magistrate may decide the same in accordance with law and expeditiously within a period of two months from the date of receipt of such application

from the petitioner. The Magistrate may pass appropriate order whether such permission is required to be given, and if yes, for how much period such permission is to be granted. It will be open for the petitioner to place reliance on this order at the time of submitting his application before the Magistrate.

This petition is accordingly allowed to the aforesaid extent, as indicated in this order. Rule is made absolute to the aforesaid extent, with no order as to costs.

3rd September, 2002 (P.B. Majmudar, J.)

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(apj)